

## CUT AND PASTE POST OCTOBER & NOVEMBER 2017

### Wage and Payroll Tax Updates Montana Minimum Wage

Current:	Effective 1/1/2018:
\$8.15 per hour	\$8.30 per hour

### 2018 Social Security Payroll Tax Cap

The maximum amount of earnings subject to the Social Security payroll tax in 2018 will be \$128,700, up by \$1,500. By Jan. 1, employers should adjust their payroll systems to account for the higher taxable wage base and notify affected employees that more of their paychecks will be subject to payroll withholding.

### 2018 Federal Contractor Wage Rates

According to a [Notice](#) from the U.S. Department of Labor (DOL) Wage and Hour Division, the new minimum wage rates for federal contractors beginning January 1, 2018 will be as follows:

\$10.35 per hour; or  
\$7.25 per hour for tipped employees.

### Drinking From a Firehose

With the new Administration in Washington, it feels like keeping up with the potential changes in the practice of human resources is like drinking from a firehose, and the future is going to be a challenging time for human resource managers. Here are some recent efforts that could have a major impact on applicants, employees, and employers (and you!). Click on the links provided below to learn more.

### Attorney General Issues Memos regarding Transgender Employment and Freedom of Speech and Religious Freedom

- In an [October 4](#) memo, *Revised Treatment of Transgender Employment Discrimination Claims*, U.S. Attorney General Jeff Sessions states that federal law **does not** protect transgender individuals from workplace discrimination based on sex. This is in opposition to former Attorney General Eric Holder’s stance in his [December 15, 2014](#) memo that Title VII prohibition of sex discrimination **does** apply to discrimination based on gender identity, including transgender status.

Sessions’ memo directs the Justice Department that the term “sex” in Title VII is applicable “only to discrimination between men and women and does not encompass discrimination based on gender identity, *per se*, including transgender status.” Sessions also withdrew Holder’s 2014 memo and directed the department to take this updated position regarding transgender status “in all pending and

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future matters, except where controlling lower-court precedent dictates otherwise, in which event the issue should be preserved for potential further review.”

Sessions added that the Justice Department must and will continue to affirm the dignity of all people, including transgender individuals, and nothing in the memo should be construed to condone mistreatment based on gender identity.

**What this Memo Means for Employers** - This memo does not change employer obligations under Montana or local law. In addition, the Equal Employment Opportunity Commission (EEOC) has not changed its interpretation and enforcement of Title VII’s prohibition of sex discrimination as forbidding any employment discrimination based on gender identity or sexual orientation. (Read the EEOC Document, [What You Should Know About EEOC and the Enforcement Protections for LGBT Workers.](#)) Finally, the directive does not reverse lower court precedent, so it will be up to the Courts to determine exactly what impact these directives would have on transgender individuals who pursue a Title VII claim.

- **Executive Order 13798 and Attorney General Guidance on Free Speech and Religious Liberty**

In May, 2017 President Trump signed Executive Order [13798](#) Promoting Free Speech and Religious Liberty. The Order mandated the Attorney General to provide Religious Liberty Guidance.

In response, on October 6, 2017, Attorney General Jeff Sessions released two memos addressed to component heads and U.S. attorneys speaking to federal protections for religious liberty:

- [Federal Law Protections for Religious Liberty](#) provides 20 principles of religious liberty and an interpretive guidance of federal law protections for religious liberty;
- [Implementation of Memorandum on Federal Law Protections for Religious Liberty](#) orders the implementation of the interpretative guidance by all attorneys within the Department of Justice.

Among the 20 principles contained in the *Federal Law* memo is the assertion that religious liberty is a fundamental right and that the free exercise of religion includes the right to act or abstain from action in accordance with one’s religious beliefs, which extends to both persons and organizations. Regarding the workplace, the principles state (my *emphasis* added):

“Principle 19. **Religious employers are entitled to employ only persons whose beliefs and conduct are consistent with the employers’ religious precepts.** Constitutional and statutory protections apply to certain religious hiring decisions. Religious corporations, associations, educational institutions, and societies—that is, entities that are organized for religious purposes and engage in activity consistent with, and in furtherance of, such purposes—have an express statutory exemption from Title VII’s prohibition on religious discrimination in employment. Under that exemption, religious organizations may choose to employ only persons whose beliefs and conduct are consistent with the organizations’ religious precepts... Indeed, even in the absence of the Title VII exemption, religious employers might be able to claim a similar right under RFRA or the Religion Clauses of the Constitution.”

**What these Memos Mean for Employers** - The memos relating to religious protections give faith-based employers more flexibility in their employment practices. Some argue the Order may expand religious protections to employers who are, themselves, religious but are not ‘faith based’ organizations; others argue the Order is merely reinforcing the current right to religious freedom. This memo does not change employer obligations under Montana or local laws. Ultimately, this is another question for the Courts. Employers should continue to provide a workplace free of discrimination and ensure all employees are treated equally and respectfully through consistently applied and enforced nondiscrimination policies.

- **Executive Order on the Affordable Care Act (ACA)**

On October 12, 2017, after numerous failed legislative attempts to repeal, or repeal and replace, the ACA, President Trump issued an (unnumbered) [Executive Order](#) directing the Departments of Labor (DOL), Health and Human Services (HHS), and Treasury to develop new rules to allow some exemptions from the ACA.

The Order's key directives are:

- Consider expanding the time period allowed for short-term limited duration insurance.
- Consider expanding which employer-funded Health Reimbursement Arrangements are allowed to reimburse their employees' premiums for individual medical insurance.
- Consider loosening restrictions on association health plans and expand availability across state lines

On October 13, 2017, President Trump announced his intent to nominate Preston Rutledge as the head of the federal Employee Benefits Security Administration (EBSA). This position has been vacant since January 2017. Working under the direction of the Secretary of the Department of Labor Alexander Acosta, Rutledge will play an important role in crafting regulatory guidance on the Employee Retirement Income Security Act, the ACA, and other employee benefit plan laws.

*What this means to employers:* The Executive Order defines the Administration's priorities but it really has no immediate effect since any rule changes must first go through the standard proposal, review, and public comment process. Some of the Order's key directives are already allowed under the law. In the meantime, all current ACA requirements and state insurance laws continue to apply.

Your GVHRA Board will do its best to monitor developments as all the federal agencies consider rule changes.

## OSHA'S "Top 10" List

OSHA's preliminary list of top workplace safety violations for FY 2017 bears a striking resemblance to the 2016 list and to the 2015 list according to Patrick Kapust, deputy director of OSHA's Directorate of Enforcement Programs. Kapust shared the top 10 list at the 2017 National Safety Council Congress & Expo. Here is the preliminary list of top 10 workplace violations:

1. Fall Protection – General Requirements: 6,072 violations
2. Hazard Communication: 4,176
3. Scaffolding: 3,288
4. Respiratory Protection: 3,097
5. Lockout/Tagout: 2,877
6. Ladders: 2,241
7. Powered Industrial Trucks: 2,162
8. Machine Guarding: 1,933
9. Fall Protection – Training Requirements: 1,523 (*this is the only newcomer to the 2017 list*)
10. Electrical – Wiring Methods: 1,405



More than 4,500 workers are killed and three million are injured on the job each year, so workplace safety is a critical concern. According to Kapust, "These things are readily fixable (and) I encourage folks to use this list..." to create a safer workplace.

**Professional Pointer:** The Montana Department of Labor & Industry's Safety and Health Bureau offers free workplace safety consultations. To learn more about this valuable resource, go to <http://erd.dli.mt.gov/safety-health/onsite-consultation>.